IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

CRP.No. 1814 of 2003()

IA 1016/02 IN OS 595/94 OF MUNSIFF COURT, MANJERI.

REVN. PETITIONER: PETITIONER IN IA/7TH DEFENDENT.

ULUVAN MOIDEEN, S/O.MARAKKAR,
MUTHUVALLUR AMSOM, MUNDAKKULAM DESOM,
ERNAD TALUK REP BY ITS POWER OF ATTORNEY HOLDER,
KURUVAMPURATH CHEKUTTY, S/O.MAMMUSSAN, RESIDING AT
MUTHUVALLUR AMSOM, MUNDAKKULAM DESOM IN ERNAD
TALUKM MALAPPURAM DISTRICT.

BY ADV. SRI.AVM.SALAHUDIN
SMT.SMITHA.V.

RESPONDENTS:RESPONDENTS 2 TO 10 IN IA/DFDS.1 TO 6 & LEGAL HEIR DECEASED PLNTF

---

1. THETTAN PALLI UMMA, D/O.THETTAN MARAKKAR
MUTHUVALLUR AMSOM, MUNDAKKULAM DESOM,
ERNAD TALUK.

2. ASEES, S/O.THETTAN PALLI UMMA,
MUTHUVALLUR AMSOM, MUNDAKKULAM DESOM.
ERNAD TALUK.

3. BROTHER THETTAN HANEEFA,
MUTHUVALLUR AMSOM, MUNDAKKULAM DESOM,
ERNAD TALUK.

4. SISTER THETTAN AYISHA,
D/O.MARAKKAR, MUTHUVALLUR AMSOM,
MUNDAKKULAM DESOM, ERNAD TALUK.

5. SISTER THETTAN AMINA, D/O.MARAKKAR,
MUTHUVALLUR AMSOM, MUNDAKKULAM DESOM,
ERNAD TALUK.

6. SISTER HAJARUMMA, D/O.MARAKKAR,
MUTHUVALLUR AMSOM, MUNDAKKULAM DESOM,
ERNAD TALUK.

7. CHANDRAN, S/O.VERUVADI KUZHAKKAN,
MUTHUVALLUR AMSOM, MUNDAKKULAM DESOM,
ERNAD TALUK.

8. BROTHER DAMODARAN, MUTHUVALLUR AMSOM,
MUNDAKKULAM DESOM, ERNAD TALUK.

9. CHAKKI, S/O.CHERUVADI KUNHAKKAN
MUTHUVALLUR AMSOM, MUNDAKKULAM DESOM, ERNAD TALUK.

BY ADV. SRI.BABU S. NAIR
SRI.BABU S. NAIR

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 15/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.Krishnan, J.

==========

C.R.P.No.1814 of 2003

==========

Dated this the 15th day of October, 2007.

ORDER

This revision is preferred against the order of the Munsiff, Manjeri in I.A.No.1016 of 2002 in O.S.No.595 of 1994. It was an application filed by the seventh defendant in the case for setting aside the ex parte decree. The present application was one for condonation of delay of one year 10 months and 17 days. It is admitted that the court below after dismissing the application for condonation of delay dismissed the petition also for setting aside the ex parte decree. In the light of the decision of this Court reported in **Lilly** v. **Rajesh** - 2004 (3) K.L.T. 712 only an appeal under Order 43 Rule 1 of C.P.C. is maintainable. It is very clearly stated in that decision that when an application to condone the delay as well as application to set aside the ex parte decree dismissed, no revision will lie under Section 115 of C.P.C. and that the remedy is to prefer an appeal under Order 43 Rule 1 of

C.P.C. Learned counsel for the revision petitioner had drawn my attention to the decision of this Court reported in **Jayakumari** v. **Ismail Rawther** - 2001 (2) K.L.T. 551. The decision of 2004 (3) K.L.T. 712 had also referred to this decision before arriving at a decision regarding the non-maintainability of the revision in such cases.

2. Therefore, this Civil Revision Petition lacks merits and it is dismissed. The appropriate remedy for the parties is to file an appeal under Order 43 Rule 1 of C.P.C. and when such an application is filed it is for the court below to consider the question of delay in the light of the fact that the Civil Revision Petition was pending before this Court from 2003 onwards.

M.N.Krishnan,
Judge.

ess 16/10